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91ST CONGRESS }
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SENATE {

REPORT
No. 91-1068

CAPT. JACKIE D. BURGESS

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 8470]

The Committee on the Judiciary, to which was referred the bill (H.R. 8470) for the relief of Capt. Jackie D. Burgess, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

AMENDMENT

On page 2, line 13, strike the word "subscription" and insert in lieu thereof the word "section".

PURPOSE OF AMENDMENT

The purpose of the amendment is to correct a typographical error in the bill.

PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Capt. Jackie D. Burgess, U.S. Air Force, of liability to the United States in the amount of \$620 as the result of administrative error, as a member of the U.S. Air Force for the period beginning September 24, 1963, and ending January 31, 1966. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which liability is relieved by this section.

STATEMENT

Captain Burgess (FR 79667) enlisted in the Army on February 17, 1954. He was discharged on February 5, 1957, upon completing nearly 3 years of active duty. He served as an enlisted member of the Inactive Army Reserve and the Idaho National Guard from February 6, 1957, until February 23, 1962. On June 28, 1963, he enlisted in the Air Force. He was discharged from this enlistment to accept a commission as second lieutenant (pay grade 0-1) in the Air Force on September 24, 1963. He has been on continuous active duty since that date. He was promoted to captain on April 1, 1967.

Section 203 of title 37, United States Code, provides special pay rates for officers in pay grades 0-1, 0-2, and 0-3 who have had over 4 years' active service as an enlisted member. These rates are greater than rates for officers in pay grades 0-1, 0-2, and 0-3 who have had over 4 years' active service as an enlisted member. These rates are greater than rates for officers who have had 4 years' or less active enlisted service. When he was commissioned, Captain Burgess' pay was computed on the special rates referred to above. Late in 1965, his entitlement to pay based on these rates was questioned. A review of his records showed that this service in the Army Reserve and the Idaho National Guard was not "active service." His only active service was in the Army from February 17, 1954, through February 5, 1957, and in the Air Force from June 28, 1963, through September 23, 1963. This active service totaled 3 years, 2 months and 15 days. This was not sufficient to entitle him to the special rates authorized for officers with over 4 years' active service as an enlisted member.

The Air Force made an audit of Captain Burgess' pay records from September 24, 1963, through January 31, 1966. This audit showed that his pay had been erroneously based on the special rates for officers with over 4 years' enlisted active service. As a result, he received overpayments totaling \$1,085.78 from September 24, 1963, through January 31, 1966. His pay was adjusted to reflect the correct rate on February 1, 1966. Collection of the overpayments from his active duty pay was initiated on February 14, 1966, at the rate of \$10 per month. As of March 15, 1969, \$375.78 had been collected leaving a balance due the United States of \$710.

The Department of the Air Force in its report to the House Judiciary Committee on the bill indicated that it would have no objection to legislative relief in Captain Burgess' case. Its investigation disclosed that Captain Burgess received the overpayments in good faith in reliance on determinations made by Air Force personnel and the Air Force concluded that Captain Burgess had no reason to be aware that his pay was based on a wrong rate. In this connection the Air Force stated:

The overpayments made to Captain Burgess were the result of administrative error which remained undetected for more than 2 years. There is nothing on file which indicates Captain Burgess could or should have been aware that his pay was based on the wrong rate. Air Force records show that he received the overpayments in good faith in reliance on the determination made by Air Force personnel that he was

entitled to be paid at the rate prescribed for an officer with over 4 years' active enlisted service. Therefore, the Air Force interposes no objection to favorable consideration of H.R. 8470.

The House committee had considered this matter and determined that on the date that the subcommittee acted, the overpayment amounted to \$620. It was determined that an equitable resolution of the matter would be to relieve him of the outstanding indebtedness as of that date. Accordingly, the House committee approved the bill in that form. This committee is in agreement with the action taken by the House of Representatives and, accordingly, recommends favorable consideration of H.R. 8470 without amendment.

Attached hereto and made a part hereof are the reports submitted to the House Judiciary Committee by the Department of the Air Force and the Comptroller General of the United States.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, October 30, 1969.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 8470, 91st Congress, a bill for the relief of 1st Lt. Jackie D. Burgess.

H.R. 8470 would relieve 1st Lt. Jackie D. Burgess of liability to the United States for \$1,085.78. This amount represents overpayment of his pay during the period September 24, 1963, through January 31, 1966, as a member of the Air Force. The bill allows for credit in the accounts of any certifying or disbursing officer for amounts for which liability is relieved. The Secretary of the Treasury would be authorized to pay Lieutenant Burgess any amounts received or withheld from him because of the overpayment. Agent or attorney fees are limited to 10 percent of the amount appropriated by H.R. 8470.

Air Force records show that Lieutenant Burgess (FR 79667) enlisted in the Army on February 17, 1954. He was discharged on February 5, 1957, upon completing nearly 3 years of inactive duty. He served as an enlisted member of the Inactive Army Reserve and the Idaho National Guard from February 6, 1957, until February 23, 1962. On June 28, 1963, he enlisted in the Air Force. He was discharged from this enlistment to accept a commission as second lieutenant (pay grade O-1) in the Air Force on September 24, 1963. He has been on continuous active duty since that date. He was promoted to captain on April 1, 1967.

Section 203 of title 37, United States Code, provides special pay rates for officers in pay grades O-1, O-2, and O-3 who have had over 4 years' active service as an enlisted member. These rates are greater than rates for officers who have had 4 years' or less active enlisted service. When he was commissioned, Captain Burgess pay was computed on the special rates referred to above. Late in 1965, his entitlement to pay based on these rates was questioned. A review of his records showed that this service in the Army Reserve and the Idaho

National Guard was not "active service." His only active service was in the Army from February 17, 1954, through February 5, 1957, and in the Air Force from June 28, 1963, through September 23, 1963. This active service totaled 3 years, 2 months, and 15 days. This was not sufficient to entitle him to the special rates authorized for officers with over 4 years active service as an enlisted member.

The Air Force made an audit of Captain Burgess pay records from September 24, 1963, through January 31, 1966. This audit showed that his pay had been erroneously based on the special rates for officers with over 4 years enlisted active service. As a result, he received overpayments totaling \$1,085.78 from September 24, 1963, through January 31, 1966. His pay was adjusted to reflect the correct rate on February 1, 1966. Collection of the overpayments from his active duty pay was initiated on February 14, 1966, at the rate of \$10 per month. As of March 15, 1969, \$375.78 had been collected leaving a balance due the United States of \$710.

The overpayments made to Captain Burgess were the result of administrative error which remained undetected for more than 2 years. There is nothing on file which indicates Captain Burgess could or should have been aware that his pay was based on the wrong rate. Air Force records show that he received the overpayments in good faith in reliance on the determination made by Air Force personnel that he was entitled to be paid at the rate prescribed for an officer with over 4 years active enlisted service. Therefore, the Air Force interposes no objection to favorable consideration of H.R. 8470.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

SPENCER J. SCHEDLER,
Assistant Secretary of the Air Force.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 7, 1969.

B-158495.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of March 20, 1969, requesting our views on H.R. 8470, a bill for the relief of 1st Lt. Jackie D. Burgess.

The bill would relieve Lieutenant Burgess of his liability to repay to the United States the amount of \$1,085.78, representing overpayment of pay as a member of the U.S. Air Force for the period beginning September 24, 1963, and ending January 31, 1966, made as the result of administrative error. The bill would also relieve any certifying or disbursing officer of liability for the overpayment and would authorize and direct the Secretary of the Treasury to pay to Lieutenant Burgess an amount equal to the aggregate of the amounts paid by him or withheld from him with respect to his indebtedness.

As stated in our letter to you dated March 9, 1966, B-158495, copy herewith, in connection with H.R. 12578, 89th Congress, concerning the same subject matter, the overpayment resulted from the payment to Lieutenant Burgess at the special rates of basic pay provided under 37 U.S.C. 203(a) (formerly 37 U.S.C. 232(a)) for commissioned officers who have been credited with over 4 years' active service as enlisted members, whereas when he entered on active duty as an officer on September 24, 1963, he had only 3 years, 2 months, and 15 days of active service as an enlisted member.

Upon discovery of the erroneous credit of basic pay in the officer's case, his record was adjusted to the correct rate effective February 1, 1966, and the total indebtedness was entered on his military pay record for repayment at the rate of \$10 per month. Deductions totaling \$350 were made from his pay through December 31, 1968, and deductions at the rate of \$10 per month have been and are currently being made on his pay record opened January 1, 1969.

We do not view with favor legislation such as H.R. 8470 which would grant preferential treatment to an individual over other persons similarly situated who have been required to refund overpayments received because of erroneous service credits or other administrative errors. See 5 U.S.C. 5514. On the record before us we find no special equity in this case which would warrant our recommending favorable consideration of the bill.

If H.R. 8470 is to receive favorable consideration, we suggest that since the officer is now serving in the grade of captain, that the bill be changed to read "Captain Jackie D. Burgess" in place of "First Lieutenant Jackie D. Burgess."

Sincerely yours,

R. F. KELLER

(For the Comptroller General of the United States).

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 9, 1966.

B-158495.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 8, 1966, requesting our views on H.R. 12578 for the relief of 1st Lt. Jackie D. Burgess.

The bill would relieve Lieutenant Burgess, U.S. Air Force, of his liability to repay to the United States the sum of \$784.58, representing an overpayment of pay during the period beginning September 24, 1963, and ending June 30, 1965, as a result of administrative error. Also, the bill would have the effect of relieving the certifying or disbursing officer of liability for the overpayment and would authorize and direct the Secretary of the Treasury to pay to Lieutenant Burgess an amount equal to the sum of any amounts received or withheld from him on account of such overpayment.

An examination of the officer's statement of service shows that he had active service as an enlisted man in the Regular Army from Feb-

ruary 17, 1954, to February 5, 1957, and active service as an enlisted man in the Regular Air Force from June 28, 1963, to September 23, 1963, a total of 3 years, 2 months, and 15 days. On September 24, 1963, he accepted a commission as a second lieutenant in the Air Force Reserve and entered on active duty in that capacity and is presently serving on active duty as a first lieutenant, U.S. Air Force.

Under the provisions of 37 U.S.C. 203(a) (formerly 37 U.S.C. 232(a)) a special rate of basic pay is authorized to commissioned officers in pay grades 0-1 to 0-3 (lieutenants and captains) who have been credited with "over 4 years' active service as an enlisted member." When Lieutenant Burgess entered on active duty as an officer on September 24, 1963, he had only 3 years, 2 months and 15 days' active service as an enlisted member. An examination of his pay record shows, however, that when he entered on active duty he was erroneously paid at the higher special rates authorized for those officers who have been credited with over 4 years' active service as an enlisted member and that he continued to be paid on such basis until January 31, 1966. Our computation of his pay on the basis of the proper pay rates prescribed under the above cited law for officers not having 4 years' active service as an enlisted member shows that he was overpaid the total of \$1,085.78 during the period September 24, 1963, to January 31, 1966. The record further shows that his pay record was adjusted to the correct rate effective February 1, 1966, and a monthly deduction of \$10 has been initiated to liquidate the indebtedness. As of February 14, 1966, a collection of \$5 has been effected.

We do not view with favor legislation such as H.R. 12578 which grants preferential treatment to an individual over other individuals similarly situated. While the overpayment apparently resulted from the erroneous inclusion of inactive enlisted service in determining the rate of pay due Lieutenant Burgess as an officer, other individuals have been required to refund overpayments received because of erroneous service credits. On the record before us, we find no special equity in Lieutenant Burgess case which would warrant our recommending favorable consideration of the bill. The question of whether relief should be granted in this case, however, is of course, for determination by Congress on the basis of the facts and circumstances presented.

If H.R. 12578 is to be favorably considered and if it is the committee's desire to relieve the officer of the entire indebtedness resulting from the erroneous credit of service, we suggest that the amount of the indebtedness and the period which it covers as stated in the bill be changed to read "\$1,085.78" and "beginning September 24, 1963, and ending January 31, 1966," respectively, to conform with the record at this time.

Sincerely yours,

FRANK H. WEITZEL,
*Acting Comptroller General
of the United States.*

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